



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANK WISNIEWSKI, ET AL.,

Plaintiffs,

- against -

JOHNSON CONTROLS, INC,

Defendant.
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22-CV-10287 (DEH) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves the open issue from Plaintiff's pre-motion letter at Dkt. 39 to compel the New York State Department of Labor ("DOL") to comply with request number 2 of the subpoena duces tecum (see Dkt. 33). The Court has considered the parties' correspondence, as well as the declarations submitted by DOL on June 28, 2024 (Dkt. 52), in compliance with the Court's order of June 14, 2024 (Dkt. 50), and all prior proceedings.

The Court concludes that DOL need not comply with request number two. DOL is a non-party. The relevant factual documents in the DOL investigation files can be sourced from Defendant Johnson Controls, as can any correspondence between Johnson Controls and the Defendants. DOL has made plain that the rates at issue are determined based on the applicable collective bargaining agreements (to which the parties have access), not by any independent determination of DOL (which is why DOL has no documents responsive to the subpoena's first request). DOL's interim deliberations on open investigations that are on hold pending this litigation are material, and the production

sought would impinge on DOL's deliberative process. And while DOL has agreed to produce closed-investigation files, the one closed investigation at issue apparently does not implicate the geographical locations or rates at issue here. Under these circumstances, the Court finds that DOL would be unduly burdened if required to produce the materials sought. See Fed. R. Civ. P. 45(d).

Accordingly, Plaintiff's motion to compel DOL to comply with respect to request number 2 of the subpoena is denied.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: July 9, 2024
New York, New York

Copies transmitted this date to all counsel of record.